IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1046 of 2006
With
FIRST APPEAL No. 1047 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER & 1 - Appellant(s)
Versus
DHULIBEN BACHUBHAI & 1 - Defendant(s)

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Appearance :
Mr.S.S.Patel,learned AGP for Appellant(s) : 1 - 2.
MR DEVENDRA A PATEL for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 04/07/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.Devendra A.Patel, learned counsel, waives service of notice on behalf of the claimants in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. These two appeals filed under Section 54 of the Land Acquisition Act,1894 ('the Act' for short) read with Section 96 of the Code of Civil Procedure,1908 are directed against the common judgment and award dated April 10,2003 rendered by the learned Joint District Judge, Fast Track Court (II), Mehsana in Land Acquisition Reference No.805/96 and Land Acquisition Reference No.806/96 by which the claimants in Land Acquisition Reference No.805/96 are awarded additional compensation at the rate of Rs.46.50 Ps. per Sq.Mt. over and above the compensation awarded to them by the Special Land

Acquisition Officer at the rate of Rs.3.90 Ps. per Sq.Mt. for their acquired land, whereas the claimants in Land Acquisition Reference No.806/96 are awarded additional compensation at the rate of Rs.47.80 Ps. per Sq.Mt. over and above the amount of compensation awarded by the Special Land Acquisition Officer at the rate of Rs.2.60 Ps. per Sq.Mt. for their acquired land.

3. A proposal was received by the State Government to acquire agricultural lands of village Karannagar, Taluka Kadi, District Mehsana for the public purpose of Narmada Canal Project. On consideration of the said proposal, the State Government was satisfied that agricultural lands of village Karannagar were likely to be needed for the said purpose. Therefore, Notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on September 22, 1992. The owners, whose lands were sought to be acquired, were served with notices. They objected to the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State

Government was satisfied that the lands of village Karannagar, which were specified in the Notification published under Section 4(1) of the Act, were needed for public purpose of Narmada Canal Project. Therefore, a declaration under Section 6 of the Act was issued, which was published in the Official Gazete on April 23,1993. The claimants were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100/- per Sq.Mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants in Land Acquisition Reference No.805/96 at the rate of Rs.3.90 Ps. per Sq.Mt. and claimants in Land Acquisition Reference No.806/96 at the rate of Rs.2.60 Ps. per Sq.Mt. The claimants were of the view that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted written applications requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of just compensation payable to them. Accordingly, references were made to the District Court, Mehsana, which were

registered as Land Acquisition Reference No.805/96 and Land Acquisition Reference No.806/96.

4. On behalf of the claimants, witness Manilal Narsinhdas Patel was examined at Exh.15. Over and above stating that the lands acquired were highly fertile and that each claimant was deriving substantial profit by sale of agricultural produces, the witness produced previous award of the Reference Court relating to the lands of this very village rendered in Land Acquisition Reference Nos.436 to 448 of 1999 whereunder the market value of the lands of this very village was assessed at the rate of Rs.38/- per Sq.Mt. The award rendered by the Reference Court in Land Acquisition Reference No.436 to 448 of 1999 was subjected to challenge before the High Court in First Appeal Nos.682 to 694 of 2000 by the State Government whereas the claimants had claimed higher compensation by filing First Appeal Nos.1396 to 1418 of 2001 and other cognate appeals. The High Court dismissed the appeals filed by the acquiring authorities but allowed in part the appeals filed by the claimants and held that the claimants were entitled to compensation at the rate of Rs.42/- per Sq.Mt. Therefore, the judgment of the

High Court rendered in those appeals was also produced on the record of the case. It was claimed by the witness Manilal Patel that in the nearby area industrial development had taken place and the lands acquired had potentiality for use for industrial purpose. On behalf of the appellants, no evidence was adduced at all. On appreciation of the evidence produced by the claimants, the Reference Court was of the opinion that previous award rendered by the Reference Court in respect of the lands of this very village was a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. It was further noticed that in the previous award Notification under Section 4(1) of the Act was published on June 22,1990 whereas in the instant case Notification under Section 4(1) of the Act was published on September 22,1992 and, therefore, the Reference Court was of the opinion that the claimants were entitled to reasonable rise in price of the land at the rate of 10% per annum. In the ultimate analysis, the Reference Court has held that the claimants in Land Acquisition Reference No.805/96 are entitled to additional compensation at the rate of Rs.46.50 Ps. per Sq.Mt. whereas the claimants in Land Acquisition Reference No.806/96 are

entitled to additional compensation at the rate of Rs.47.80 Ps. by impugned awarded dated April 10,2003, which has given rise to above numbered two appeals.

5. This Court has heard Mr.S.S.Patel, learned AGP for the appellants and Mr.Devendra A.Patel, learned counsel for the claimants at length and in great detail. This Court has also considered the documents produced before this Court by learned counsels for the parties. From the record of the case, it is evident that in order to substantiate the claim for enhanced compensation, witness Manilal Patel was examined by the claimants at Exh.15. During the course of recording of his evidence, he produced revenue records i.e Village Form Nos.7 and 12 to indicate that the lands acquired were fertile and that different crops were being taken by the claimants. What was maintained by the witness before the Reference Court was that industrial development had taken place near the acquired lands and that the lands acquired had potentiality for being put to industrial use. This assertion made by the witness of the claimants could not be demonstrated to be untrue during his cross-examination. Though it was claimed by the witness for the claimants that the lands

acquired were highly fertile and that each claimant was earning substantial profit from the sale of agricultural produces, the enhanced compensation was not claimed on yield basis. What was relied upon by the witness for the claimants was previous award relating to the lands of this very village which was rendered in Land Acquisition Reference No.436 to 448 of 1999. It is well settled by catena of decisions of Supreme Court that previous award of the Reference Court relating to the lands of the same village is a relevant piece of evidence for the purpose of determining the market value of the lands acquired subsequently from that very village. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of this very village which was rendered in Land Acquisition Reference Nos.436 to 448 of 1999. Exh.12, which is previous award of the Reference Court, indicates that the lands of village Karannagar were acquired for Narmada Yojana pursuant to publication of Notification issued under Section 4(1) of the Act in the Official Gazette on June 22,1990. It further shows that the Land Acquisition Officer had offered compensation to the claimants at

the rate of Rs.3.90 Ps.per Sq.Mt. Feeling aggrieved, the references were sought by the claimants and after appreciating the evidence adduced by the parties, the Reference Court by judgment and award dated October 15,1999 awarded in all compensation at the rate of Rs.38/- per Sq.Mt. As observed earlier, the award of the Reference court was subjected to challenge by the State Government in First Appeal No.682 to 694 of 2000 whereas the claimants had filed First Appeal Nos.1396 to 1418 claiming enhanced compensation. The judgment dated September 14,2001 rendered by the Division Bench of this Court indicates that First Appeal Nos.682 to 694 of 2000 were dismissed whereas the appeals filed by the claimants were accepted in part by holding that they were entitled to compensation at the rate of Rs.42/- per Sq.Mt. Therefore, this Court is of the confirmed view that the Reference Court was justified in placing reliance on the decision of the High Court for the purpose of coming to the conclusion that on the basis of the previous award of the Reference Court, as modified by the High Court, the claimants were entitled to compensation at the rate of Rs.42/- per Sq.Mt. It was noticed by the Reference Court in this case that there was time gap of about 2 years between the

Notification issued under Section 4(1) of the Act by which the lands of this very village were acquired earlier and the Notification issued in the instant case and,therefore, the claimants were entitled to rise in price of lands at the rate of 10% per annum.

6. On over all view of the matter, this Court is satisfied that just amount of compensation payable to the claimants is determined by the Reference Court on the basis of evidence adduced before it and no ground is made out by the learned Assistant Government Pleader to interfere with the same in the instant Appeals.

7. The appeals, therefore, which have no substance, are liable to be dismissed.

8. For the foregoing reasons, the Appeals fail and are dismissed. There shall be no order as to costs.

The Registry is directed to draw decree in terms of this Judgment.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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